

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 206 of 1994

with

APPEAL FROM ORDER No 229 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BANK OF INDIA

Versus

STERLING FERRO ALLOY PVT. LTD

Appearance:

1. Appeal from Order No. 206 of 1994

MR JT TRIVEDI with Ms.DN DAVE for Petitioner

MR SB VAKIL with AS VAKIL & ASPI KAPADIA for Respondent
No. 1

NANAVATI & NANAVATI for Respondent No. 2

MS ROOPAL R PATEL for MS VP SHAH for Respondent No. 3

2. Appeal from OrderNo 229 of 1994

MS ROOPAL PATEL with MS. VP SHAH for Petitioner

MR AS VAKIL with ASPI KAPADIA for Respondent No. 1

MR JT TRIVEDI & Ms.DN DAVE for Respondent No. 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 20/07/98

ORAL JUDGEMENT

1n. The plaintiff - Sterling Ferro Alloy Pvt. Ltd. has filed Special Civil Suit No. 238 of 1994 against defendant - Unity Steels Limited for recovery of Rs.31 lakhs with running interest at the rate of 18% p.a. from the date of the suit till realisation on the ground that some materials were supplied by the plaintiff to the defendant company and the accounts with regard to such dealings came to be settled between the plaintiff and the defendant.

2. In the aforesaid suit the plaintiff moved application exh. 9 praying for issuing direction to the defendant-company to hand over the materials detailed in para. 3 of the application and to file a statement of the actual quantity of each variety of the materials in the Court within one week from the date of delivery of the materials described in para. 3 of the application to the plaintiff. The learned trial Judge passed following order on 28/4/1994 i.e. the same day on which the application exh. 9 was moved :-

"Heard the advocate. Order is granted as prayed and defendant is accordingly directed to deliver the goods as stated in para. 3 under the head of details of material accordingly."

3. The third parties, namely Bank of India and Punjab National Bank moved their respective applications exhs. 19 and 25 before the learned trial Judge for joining the concerned banks as parties to the proceedings of the suit and for staying the aforesaid order dated 28/4/1994 passed below application exh. 9. I have been informed that the learned trial Judge granted ad-interim stay of the order dated 28/4/1994 passed below exh. 9.

4. The applications moved by the aforesaid respective banks at exhs. 19 and 25 came to be heard by the learned trial Judge who by his impugned order dated 10/6/1994 granted the applications of the respective banks for joining them as defendants, but refused to continue the stay of further implementation of order dated 28/4/1994 passed below application exh.9 and vacated the stay order. Both the banks have moved both these appeals against the impugned order dated 10/6/1994

whereby the learned trial Judge vacated the stay of further implementation of the order below exh. 9.

5. I have heard learned advocates appearing for the rival parties; although none for M/s. Nanavati & Nanavati has appeared and, therefore, they could not be heard. It might be noted that both these appeal have been notified from time to time for final hearing and on no occasion any advocate from M/s. Nanavati & Nanavati appeared to canvass the cause of their clients.

6. I have gone through the impugned order passed by the learned trial Judge. I have not been able to trace any justifiable reason for vacating the order of stay of further implementation of order below exh. 9. As a matter of fact, it was the case of both the banks before the trial Court that the materials in question were hypothecated to both the banks. In that view of the matter both the banks prima-facie appear to be secured creditors against the said materials. Therefore, in no case the materials could be allowed to be handed over by the defendant to the plaintiff, particularly when the suit was pending. This is one ground on which both these appeals deserve to be allowed.

7. It has also been submitted on behalf of the appellants that by virtue of the provisions contained in Section 22 of the Sick Industrial Companies (Special Provisions) Act, the learned trial Judge ought not to have permitted delivery of the goods in question by the defendant to the plaintiff during the pendency of the suit. In my opinion there is also a great deal of force in this submission.

8. Under the aforesaid circumstances the impugned order in so far as it seeks to vacate the stay of implementation of the order dated 28/4/1994 passed by the trial Court below application exh. 9, the same deserves to be set aside and the stay of the order dated 28/4/1994 passed below application exh. 9 deserves to be continued till the final disposal of the suit as prayed for by both the banks in their respective applications. Order accordingly. Both these appeals are accordingly allowed with no order as to cost.

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PVR ao20694j.